

Appeal.

CC Docket Number 02-6

Program 232:

Travis County Learning Center (JJAEP)

400 Neal St. (Austin High School, P-21)

Austin, Texas 78702-2968

Travis County

(512) 236-9512

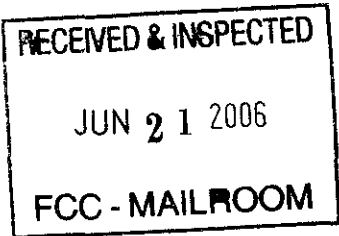
TEA Campus 227-901-036

ESC-13

Entity # 91795

FccRN 0012875357

DOCKET FILE COPY ORIGINAL



Contact Person: Kent Weisner

Project Engineer

Box 1747

Kirtland, NM 87417

505 598 6442 Office

505 598 0049 Fax

weisken@hotmail.com

Appeal Denial Letter: April 20, 2006.

BEN 91795

471 App. #441369

Funding Request # 1220504

USAC is simply in error by denying funding for this school. This eligible entity was denied because it is thought to be a Federally funded Unaccompanied Alien Children Program when it is a Texas funded Juvenile Justice School. See: All documentation provided including a letter from Linda Brooke. Travis is funded for FY: 2006 and was funded in previous years. TCLC is on the campus of Austin High School.

This issue of appeal denial by USAC is inherently un-constitutional as it puts entities at a disadvantage when there is no explanation as to why a facility is denied.

Explanation: The United States Bill of Right as expressed in the Fourteenth Amendment spells out *Procedural Due Process.

In the appeal we could not, under the rules, submit documents because none were ever requested during the PIA process. We could not point out to the reviewer, the false statements being made by the PIA person. We could not even submit evidence that would support our accusations because we have no rights of due process. Those rights are:

- The Right to be Heard.
- The Opportunity to affect the Judgment or Result.


Kent Weisner

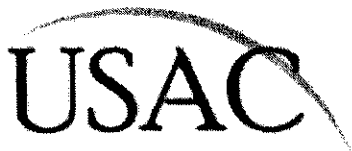
Project Engineer, e-rate.

6/18/06

***Procedural due process** is essentially based on the concept of procedural fairness. As a bare minimum, it includes an **individual's** right to be **adequately notified of charges** or **proceedings** involving them, and the **opportunity to be heard** at those proceedings.

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Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

April 20, 2006

Kent Weisner
Travis County Learning Center, JJAEP
P.O. Box 1747
Kirtland, NM 87417

Re: Applicant Name: TRAVIS COUNTY LEARNING CENTER
Billed Entity Number: 91795
Form 471 Application Number: 441369
Funding Request Number(s): 1220504
Your Correspondence Dated: February 07, 2006

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1220504
Decision on Appeal: **Denied**
Explanation:

- On appeal, you are requesting reconsideration of SLD's decision to deny this request for an ineligible entity. You state that you contacted USAC regarding this decision and were told it was denied due to "no third party confirmation." In support of your appeal, you state that you checked with Linda Brooke, the Director of Education at the Texas Juvenile Probation Commission and were told that she was never contacted regarding third party confirmation of the eligibility of this entity. You also state that your files show no contact regarding the issue of third party confirmation. Thus, you conclude that due process has been violated and USAC had no just cause for the determination.
- Upon review of your appeal letter, the relevant facts, and supporting documentation, the SLD determined that during the Initial Review of Casa el

Paso, an entity run by Southwest Key, PIA requested multiple times during April 2005 that you provide information to determine the eligibility of entities run by Southwest Key. You were informed that in order to be eligible to receive discounted services, per the rules of this support mechanism, schools must meet the statutory definition of an elementary or a secondary school found in the No Child Left Behind Act of 2001 (20 U.S.C. Section 7801 (18) and (38)). Your multiple responses in April 2005 all clearly stated that the entities run by Southwest Key are authorized under Title X of the No Child Left Behind Act to run Unaccompanied Minor Dorm Schools/Programs, but also showed that the state has no jurisdiction over its schools. On April 22, 2005, you stated via email that the U.S. Department of Health and Human Services would be able to verify the status of the schools run by Southwest Key. However, SLD still did not receive information that the schools run by Southwest Key meet the statutory definition of an elementary or a secondary school. SLD then determined this entity was also run by that program.

- Whether an individual school, school district, or consortia of schools or school districts are eligible for discounts depends on whether the entity meets the statutory definitions as outlined below. The information provided indicates that this entity does not satisfy the definition explained below, therefore, SLD denies your appeal because the entity is not eligible for support.
- Your Form 471 application included costs for the following ineligible entity to receive products and services: Travis County Learning Center. FCC rules provide that “[o]nly schools meeting the statutory definitions of “elementary school,” as defined in 20 U.S.C. 7801(18), or “secondary school,” as defined in 20 U.S.C. 7801(38) . . . shall be eligible for discounts.” 47 C.F.R. § 54.501(b)(1). The FCC has defined a “school” as including “individual schools, school districts, and consortia of schools and/or school districts.” Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, FCC 97-157, ¶ 425, n.1087 (rel. May 8, 1997). 20 U.S.C. 7801(18) defines an elementary school as “a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.” 20 U.S.C. 7801(38) defines a secondary school as “a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12.” 47 C.F.R. § 54.500(c), (k).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure"

posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Kent Weisner
Travis County Learning Center, JJAEP
P.O. Box 1747
Kirtland, NM 87417

mailed from code: 07981
my Whiggany, N.J.
on 04/20/2006

Billed Entity Number: 91795
Form 471 Application Number: 441369
Form 486 Application Number:



TEXAS JUVENILE PROBATION COMMISSION

P.O. Box 13547, Austin, Texas 78711

Vicki Spriggs, Executive Director

Telephone (512) 424-6700, TDD (512) 483-4000, FAX (512) 424-6717

February 17, 2006

To whom it may concern,

Please be advised that Travis County Learning Center, Cameron County Learning Center and Hidalgo County Learning Center are all three programs are required to operate by the Texas Education Code, and under the authority of the local juvenile board with oversight responsibility by the Texas Juvenile Probation Commission.

These juvenile justice alternative education programs are not operate as for-profit businesses and do not have endowments exceeding \$50 million.

Should you need any further information please feel free to contact me

Sincerely,

Linda P. Brooke
Director of Education Services

Southwest Key Third Party Verification Information: JJAEP.

Revised: 10/24/2005

Our Children are the Future

Juvenile Justice Alternative Educational Programs were established in counties with a population of over 125, 000 to take in troubled youth expelled from local School district entities. See page 14 of:

http://www.tjpc.state.tx.us/about_us/juv_justice_overview.htm

The juvenile is placed in these Schools by order of a juvenile court under the supervision of the Texas Juvenile Probation Commission. (See: Texas Juvenile Justice System at the link above) The Education Division of TJPC www.tjpc.state.tx.us/ is the authority. Linda Brooke is the director and can verify the entities,

Linda.Brooke@tjpc.state.tx.us

Southwest Key Inc. www.swkey.org is a non-profit company (will fax documentation upon request) that, through its Southwest Key Schools (BEN 14255719) is the administrative authority over all educational entities. The separation of SW Key Inc from SW Key Schools is due to the fact that the company also has programs that are not e-ratable such as youth tracking services in Georgia.

Currently there are three JJAEP bus-in or walk-in facilities and they are:

**Travis County Learning
Center, JJAEP
400 Neal (Austin High School, P-21)
Austin, TX 78702
Entity# 91795
FCC RN 0012875357
TEA Campus 227-901-036
ESC-13**

**Cameron County Learning Center, JJAEP
102 Kilgore Rd.
San Benito, TX 78586
956 361 4629
956 361 4630 fax
Entity 233401
RN 0012874996
TEA Campus# 031-912-003
ESC-1**

**Hidalgo County Learning Center, JJAEP
3900 N. 23rd St.
McAllen, TX 78501
956 688 6123
Entity#12787080
RN 0012875241
TEA Campus 108-906-009
ESC-1**

04/07/2004 15:52 FAX 513 263 3756

TE/GE CINTI

002

Internal Revenue Service**Date:** April 7, 2004

Southwest Key Program, Inc.
3000 S. IH 35.410
Austin, TX 78704-6536

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
Kim A. Chambers 31-07674
Customer Service Specialist
Toll Free Telephone Number:
8:00 a.m. to 6:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
74-2481167

Dear Sir or Madam:

This is in response to your request of April 7, 2004, regarding your organization's tax-exempt status.

In June 1988 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

-2-

Southwest Key Program, Inc.
74-2481167

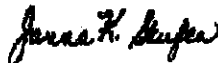
Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Section 6104 of the Internal Revenue Code requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. The law also requires organizations that received recognition of exemption on July 15, 1987, or later, to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. Organizations that received recognition of exemption before July 15, 1987, and had a copy of their exemption application on July 15, 1987, are also required to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. For additional information on disclosure requirements, please refer to Internal Revenue Bulletin 1999 - 17.

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Janna K. Skufca, Director, TE/GE
Customer Account Services



Texas Juvenile Probation Commis

4900 North Lamar, Austin, Texas 78751 - (512) 424-6700, fax (512) 424-6717

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The Texas Juvenile Justice System

- [OVERVIEW OF THE TEXAS JUVENILE JUSTICE SYSTEM](#)
- [JUVENILE LAW AND PROCEDURE IN TEXAS](#)
- [JUVENILE JUSTICE AND EDUCATION](#)
- [REFERENCES](#)

I. OVERVIEW OF THE TEXAS JUVENILE JUSTICE SYSTEM

The Juvenile Justice System in the State of Texas can best be described as consisting of two major components: a state-level component and a local-level component. Each component has distinct functions, duties, and responsibilities. Together these components make up one of the most progressive and modern juvenile justice systems in the nation. Many states look to Texas for innovative and creative approaches to difficult juvenile justice issues and problems. The system emphasizes protection for the state's citizens and holds juvenile offenders, and frequently parents, accountable for their actions, while efforts are made to rehabilitate the child to be a productive member of society.

A. State Level Agencies State Level Agencies. The Texas juvenile justice system consists of two primary state-level agencies devoted to juvenile justice functions. These agencies are the Texas Juvenile Probation Commission and the Texas Youth Commission.

1. Texas Juvenile Probation Commission (TJPC). The Texas Juvenile Probation Commission, commonly referred to as "TJPC", was created in 1981 by the Texas Legislature to bring consistency and quality to juvenile probation services in the state. TJPC is among 10 other state agencies under the oversight of the Texas Health and Human Services Commission.

a. Creation and Purpose. The TJPC was created by Chapter 141 of the Texas Human Resources Code, its enabling legislation. This statute

mandated the following purposes for the agency: 1) to make probation services available to juveniles throughout the state; 2) to improve the effectiveness of juvenile probation services; 3) to provide alternatives to the commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services; 4) to establish uniform standards for the community-based juvenile justice system; 5) to improve communications among state and local entities within the juvenile justice system; and 6) to promote delinquency prevention and early intervention programs and activities for juveniles.

b. **Board Members.** The TJPC is governed by nine board members appointed by the Governor with the advice and consent of the Senate. These board members must consist of two district court judges who sit as juvenile court judges; two county judges or commissioners; and five members of the public who are not employees in the criminal or juvenile justice system. Each board member serves a term of six years. The board appoints the Executive Director of the agency.

c. **Staff.** TJPC has a small staff of 55 juvenile justice professionals, many of whom have been chief juvenile probation officers, prosecutors, trainers and criminal justice professionals. The staff has a combined level of experience that is invaluable to local level juvenile justice practitioners.

d. **Location.** The headquarters of TJPC are located in the Brown-Heatly Building at 4900 North Lamar Boulevard, 5th Floor East, Austin, Texas 78751. The central phone number is (512)424-6700.

e. **Functions.** The Texas Juvenile Probation Commission performs a variety of key functions in the Texas juvenile justice system. These functions include:

1. **Conduit For Legislative Appropriations.** TJPC distributes funds appropriated by the Texas Legislature to assist local juvenile boards in operating probation departments, detention facilities and providing basic and special services to children in the juvenile justice system. In fiscal year 2000, TJPC will distribute approximately \$106.8 million dollars to juvenile boards in Texas.

2. **Strategic Planning and Policy Development.** TJPC regularly conducts a formal strategic planning process, in conjunction with key stakeholders in the system, to project the needs of the juvenile justice system and develop policy accordingly. Strategic planning data is crucial information that is presented to legislative leadership.

3. **Promulgate and Enforce Statewide Standards.** TJPC is legislatively mandated to promulgate administrative standards to regulate the administration of probation departments and standards relating to the physical construction and operation of juvenile pre-adjudication and post-adjudication detention facilities. The agency monitors compliance with these standards annually by conducting on-site visits to all probation departments.

4. **Education and Training.** TJPC provides no cost or low cost training to juvenile justice professionals across the

state including juvenile board members, juvenile court judges, justice and municipal court judges, juvenile prosecutors, probation officers, correctional and detention officers, law enforcement, students, state agencies, and the public. Trainings and materials cover a broad range of topics pertinent to the juvenile justice system. During fiscal year 1999, 2,243 Texas probation personnel received 36,388 hours of training. During this time, TJPC's training curriculum was offered in 123 statewide, regional and local workshops.

5. **Certify Juvenile Probation and Detention Officers.** TJPC's Training Department certifies probation, detention and corrections officers. A person must have acquired a bachelor's degree, completed one year of graduate study or one year social work experience, and completed 40 hours of training to be certified as a juvenile probation officer.

6. **Legal and Technical Assistance.** TJPC's Legal and Legislative, Field Services and Research/Statistics divisions provide legal and technical assistance to juvenile justice practitioners statewide regarding a wide variety of topics ranging from juvenile law and procedural questions to programmatic issues related to services for children.

7. **Interagency Workgroups and Projects.** TJPC has been instrumental in developing interagency workgroups with the governing boards and staffs of other state agencies that provide services to children. The goal of these projects is to improve the delivery of services to children and to reduce or minimize barriers to efficient service delivery.

8. **Federal Programs Interface.** TJPC's Title IV-E Federal Foster Care Reimbursement Program assists probation departments in recouping federal monies for juvenile offenders placed in approved residential placements. TJPC's Title IV-E Federal Foster Care Reimbursement Program assists probation departments in recouping federal monies for juvenile offenders placed in approved residential placements.

9. **Management Information Systems.** CASEWORKER, a software program developed by TJPC, is utilized by the majority of probation departments in Texas to facilitate case management and statistical compilation of data.

10. **Publications.** TJPC publishes a variety of documents including annual reports, newsletters, program manuals, reference materials and statewide statistical reports related to the juvenile justice system in Texas. These publications are distributed free of charge to interested persons.

11. **Advocacy For Children.** TJPC is committed to advocating for the children of Texas by educating lawmakers, juvenile justice professionals, and the public regarding the issues and needs in the juvenile justice system.

12. **Programs.** TJPC provides funding and statewide assistance in the development of creative and innovative programs for children including substance abuse, delinquency prevention and early intervention programs.

13. **Research and Planning.** TJPC's Research and Statistics Division collects all data relating to juvenile crime and the juvenile justice system in Texas. Annual publications distribute this data to key decision-makers.

2. **Texas Youth Commission (TYC).** The Texas Youth Commission, commonly referred to as "TYC", is the state agency that operates the institutional component of the juvenile justice system. TYC provides for the care, custody, rehabilitation, and the reestablishment in society of juveniles who are committed by the courts for having engaged in delinquent conduct. TYC operates both institutional and community-based residential programs and provides supervision for juveniles upon their release into the community. Additionally, TYC contracts with private sector residential and non-residential service providers.

a. **Creation and Purpose.** The TYC was originally established as the Texas Youth Development Council by the Gilmer Aiken Act in 1949. The 55th Legislature in 1957 changed the name to the Texas Youth Council and in 1983, the name was again changed to the Texas Youth Commission. Over the years, the purpose of the TYC has changed somewhat, with the current focus now on the control and rehabilitation of the state's most violent and chronic juvenile offenders.

b. **Board Members.** The TYC is governed by a board consisting of six members appointed by the Governor with the advice and consent of the Senate. The board members are citizens recognized within their communities for their interest in youth. Members serve a term of six years. The board employs the Executive Director of the agency.

c. **Staff.** The TYC has a staff of approximately 4,900 employees which are divided between the central headquarters in Austin, parole services in the community, and their state schools and community-based treatment facilities.

d. **Location.** The TYC's central administrative headquarters are located in the Brown-Heatly Building at 4900 North Lamar Boulevard, 2nd Floor, Austin, Texas 78751. The central phone number is (512) 424-6700.

e. **Functions and Programs.** Functions and Programs. TYC operates numerous specialized treatment programs for juvenile offenders. These include a resocialization program, capital offender program, sex offender treatment program and a chemical dependency treatment program.

f. **Secure Facilities.** Secure Facilities. TYC operates eight training schools which are located in Beaumont, Brownwood, Bryan, Crockett, Edinburg, Gainesville, Giddings, Mart, Pyote, San Saba, and Vernon with an Orientation and Assessment Unit in Marlin. Seriously emotionally disturbed youth are held at the Corsicana Residential Treatment Center. TYC also operates a bootcamp in Sheffield.

g. **Community Placements.** TYC operated community-based programs are typically used as a transitional assignment following completion of a juvenile's placement in a secure setting. The Commission contracts with residential programs throughout the state that provide various placement

options and treatments. TYC operates nine community-based residential programs located in Austin, Dallas, Fort Worth, San Antonio, El Paso, Corpus Christi, Harlingen, McAllen and Roanoke.

3. Other Agencies. Other Agencies. Many other state agencies are active in the Texas juvenile justice system in various ways. Some key agencies include:

a. Texas Department of Mental Health and Mental Retardation (TDMHMR). The MHMR provides services to those juveniles having mental illness or mental retardation and who are not competent to stand trial or are found to be not responsible for their conduct.

b. Texas Department of Protective and Regulatory Services (TDPRS). The DPRS provides services to abused and neglected children, who are often the same children who commit crimes as juveniles. DPRS also operates the STAR (Services to At-Risk Youth) Program, which provides services to children at risk and their families.

c. Texas Department of Public Safety (DPS). The Texas Department of Public Safety is now a major player in the juvenile justice system as a result of legislative changes made during the 1995. DPS operates the Juvenile Justice Information System, which is a computer database that collects statewide data regarding the arrest, adjudication and disposition of juvenile offenders, including fingerprints of the child.

B. Local Level Agencies/Entities. Local Level Agencies/Entities. The juvenile justice system in Texas could not function without the local-level component that consists of numerous entities. Each of these entities plays a critical role in the operation of the juvenile system.

1. County Juvenile Board. County Juvenile Board, pursuant to the Texas Human Resources Code Annotated chapter 152 et. seq. (Vernon 1996). Every county has a statutorily created juvenile board that performs oversight functions for the juvenile justice system at the local level. The particular statute that creates the individual juvenile board outlines the membership on the board, but typically all district court judges, county court judges, and statutory county court judges are among the members. The juvenile board hires the Chief Juvenile Probation Officer and makes policy and budgeting decisions for the juvenile probation department in the county.

2. Juvenile Court Judges. Juvenile Court Judges. Who the juvenile court judge or judges will be in any county is totally up to the discretion of the juvenile board in that county. Pursuant to the Texas Family Code Annotated Section 51.04 (b) (Vernon 1996) , the local juvenile board designates the judges that will sit as the juvenile court judges. The juvenile court may be the district court, criminal district court, domestic relations court, county court or the county court-at-law court. There are 407 juvenile court judges in the State of Texas.

3. County Juvenile Probation Department. The local juvenile probation department is the entity that deals with 97% of the juveniles who commit crimes in the community. The Texas Youth Commission handles only 3% of those juveniles who are committing offenses. There are 168 juvenile probation departments in the state of Texas.

a. Staff. Juvenile probation departments are composed of well-educated and highly experienced individuals. To be certified as a juvenile probation officer, a person must have a bachelor's degree and one year of graduate study or one year of related work experience and 40 hours of basic probation training prior to certification. Juvenile detention officers are also certified according to TJPC standards. There are 2,205 certified juvenile probation officers in Texas and 1,176 certified

juvenile detention officers, and 549 certified juvenile corrections officers.

b. Chief Juvenile Probation Officer (CJPO). The Chief of a probation department is selected and hired by the juvenile board and the Chief reports directly to the juvenile board. The CJPO is responsible for day to day operations of the probation department, and in smaller counties, the chief actually supervises the probationers. There are 168 Chief Juvenile Probation Officers.

4. County Commissioner's Court. The county Commissioner's Court plays a vital role in the local component of the juvenile justice system by providing funding to supplement the state contributions.

5. Juvenile Prosecutors. Every county will have a juvenile prosecuting attorney(s), who may be an Assistant District Attorney or an Assistant County Attorney. Whether the juvenile prosecutions are handled by the District Attorney's Office or the County Attorney's Office is a matter of local preference, and will historically have been in one or the other office.

6. Justice and Municipal Court Judges. Justice and municipal court judges play a key role in the juvenile justice system. Justice and municipal judges deal with most Class C misdemeanors and ordinance violations of juveniles. Truancy and failure to attend school cases are most commonly handled in these courts. Justice and municipal court judges routinely magistrate juvenile offenders (the juvenile procedural equivalent of *Miranda* warnings for adult offenders) and conduct detention hearings when juvenile judges are unavailable.

7. Law Enforcement. Law enforcement officers are responsible for the investigation of criminal offenses by juveniles and for arresting juvenile offenders. Many counties have specially trained officers who handle only juvenile cases. Many law enforcement agencies operate first offender programs also.

8. Volunteers. It is important to note the role of volunteers in the juvenile justice system. Many counties utilize volunteer programs in various areas including mediation, victim-offender programs, community restitution programs, mentoring, prevention, etc.

C. Funding. The state-level component and the local-level component of the juvenile justice system are funded individually by the state legislature and the local county commissioner's courts, respectively. Additionally, some probation departments may receive federal grant monies for juvenile services and programs.

1. State Legislative Appropriations. The Texas Legislature appropriates funds biennially (every two years) to state agencies in the General Appropriations Act (i.e., House Bill 1, 75th Texas Legislature, Regular Session 1997).

a. Texas Juvenile Probation Commission (TJPC). TJPC was appropriated the following amounts for fiscal years 2000 and 2001:

| | |
|------|---------------|
| 2000 | \$107,885,022 |
| 2001 | \$108,864,559 |

Of the amounts appropriated, approximately 96% of the funds are passed through to the local juvenile probation departments to provide juvenile services in the communities. The funds received by local juvenile boards from TJPC constitute 40% of the total funding that operates the local juvenile probation departments.

b. Texas Youth Commission (TYC). TYC was appropriated the following amounts for fiscal years 2000 and 2001:

| | |
|------|---------------|
| 2000 | \$268,564,146 |
| 2001 | \$247,806,006 |

The amounts above include \$36.1 million in 2000 and \$11.3 million in 2000 for the construction and renovation of facilities.

2. Local County Contributions. Local county financial contributions constitute the bulk of funding going into the state juvenile justice system. Pursuant to the Texas General Appropriations Act, to be eligible to receive state funding assistance, a county must maintain their 1994 level of funding going to the local juvenile probation department. In 1998, local contributions totaled \$155 million dollars or 60% of the total funding to local probation departments.

D. Statistics. Various state agencies collect and publish statistical information related to juvenile crime. The TJPC annually publishes a statistical report that is available to the public showing the juvenile crime and juvenile court activity during the year.

1. Referrals. In calendar year 1998, there were 125,608 referrals of offenses committed by juveniles made to juvenile probation departments across the state.

2. Dispositions. In 1998, there were 3,416 juveniles committed to the Texas Youth Commission. A total of 433 juveniles were certified to stand trial as adults. By far, the majority of offenses are disposed of by informal or formal juvenile court probation.

II. JUVENILE LAW AND PROCEDURE IN TEXAS

Juvenile law and procedure in Texas is a combination of laws drawn from several areas. Juvenile cases are significantly different from adult criminal cases. It is also important to note that a juvenile case is actually a civil proceeding whereas an adult criminal defendant is charged in a criminal proceeding. Juvenile law is a hybrid of civil and criminal law. While the actual charges against a juvenile are brought by means of a civil lawsuit, the juvenile offender is given virtually the same constitutional rights, privileges and protections that an adult criminal defendant possesses. The juvenile system has its own set of terminology and processes that differ drastically from its adult counterpart.

The original Title III of the Texas Family Code was written in 1973 and has been amended numerous times over the years. The single most significant revision to juvenile law and procedure came in 1995 during the 74th Texas Legislature where juvenile justice reform was a major issue. Voluminous changes in the juvenile justice system resulted, most of those dealing specifically with violent and habitual juvenile offenders.

A. Introduction. Texas juvenile law is governed primarily by Title III of the Texas Family Code entitled the "Juvenile Justice Code". The main goals of the juvenile justice system in Texas, as mandated by TEX. FAM. CODE ANN. ' 51.01 (Vernon 1996), are to provide for the safety and protection of the public, promote the concept of punishment and accountability, and provide treatment and rehabilitation of the juvenile offender in the community.

B. Terminology and Related Procedural Processes. For purposes of juvenile law, there are several unique terms and definitions that are important to understand.

1. Child. To invoke the jurisdiction of the juvenile court, an alleged juvenile offender must fit the definition of a *child* under TEX. FAM. CODE ANN. ' 51.02. A *child* is a person who is 10 years of age or older and under 17 years of age, or a person who is

17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

2. Delinquent Conduct. Delinquent conduct is defined to be 1) conduct that violates a penal law of Texas or the United States that is punishable by imprisonment or by confinement in jail (i.e., Class B Misdemeanors through Capital felonies); 2) a violation of a lawful order of a juvenile court except an order prohibiting commission of fineable only offenses, runaway, or truancy; 3) conduct that violates a municipal or justice court order under circumstances that would constitute contempt of court; and 4) the third or subsequent offense of driving under the influence of alcohol by a minor. TEX. FAM. CODE ANN. ' 51.03 (a).

3. Conduct Indicating A Need For Supervision (CINS). Conduct indicating a need for supervision (CINS) is defined as conduct, other than traffic offenses, that violates 1) penal laws punishable by fine only or penal ordinances of any political subdivision of the state; 2) truancy; 3) runaway; 4) inhalant abuse; 5) an act that violates a school districts previously communicated written standards of student conduct for which the student has been expelled; or 6) conduct that violates a court order for a child declared at risk. TEX. FAM. CODE ANN. ' 51.03 (b).

4. Detention Hearing. If a child is taken into custody, juvenile court intake (usually the juvenile probation department) initially determines if the person meets the definition of "child" discussed above and whether probable cause exists to believe the child engaged in the offense. Intake then makes a determination on whether a child should be detained or not. The Texas Family Code has a built-in presumption in favor of releasing the child to a suitable parent or guardian. At least one of five statutory criteria to detain must be present. These five criteria are: (1) the child is likely to abscond or be removed from the jurisdiction of the court, (2) suitable supervision, care or protection for the child is not being provided by a parent, guardian, custodian, or other person, (3) the child has no parent, guardian, custodian, or other person able to return him to the court when required, (4) the child may be dangerous to himself or he may threaten the safety of the public if released, or (5) the child has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released. TEX. FAM. CODE ANN. Section 54.01.

If a child is detained by intake then a judge must make a finding of probable cause within 48 hours and hold a detention hearing within one or two working days. The court uses the same criteria as intake in deciding whether to detain a child. Detention hearings must then be held every 10 working days thereafter. In counties without detention centers, detention hearings must be held every 15 working days.

5. Adjudication and Disposition Hearings. In adult criminal proceedings, a defendant has a two-part or bifurcated trial. The initial proceeding is the guilt/innocence phase that is followed by a separate proceeding known as the punishment phase. Juvenile law has adopted the same basic rationale, however the terminology differs. The initial phase for juvenile offenders is called the *adjudication hearing*, while the latter proceeding is known as the *disposition hearing*.

a. Adjudication Hearing. A child has a right to a trial by jury unless that right is waived by the child and the child's attorney. A jury verdict must be unanimous and for determinate sentencing cases, the jury must be composed of 12 persons. TEX. FAM. CODE ANN. ' 54.03.

b. Disposition Hearing. The disposition hearing must be separate, distinct, and subsequent to the adjudication hearing. There is no right to

a jury at the disposition hearing unless the child is being prosecuted under the determinate sentencing act. TEX. FAM. CODE ANN. ' 54.04.

C. Juvenile Court Intake. Unlike the adult system where adult probation officers begin their involvement with the offender after the court disposes of the case, juvenile probation officers begin dealing with the juvenile offender immediately upon receipt of a referral (offense) from law enforcement or other referral sources (public, school, social service agencies, etc). The juvenile probation department functions as the intake unit for the juvenile court in most Texas counties. They screen the cases to determine if probable cause exists and they make decisions on whether informal or formal court proceedings are needed. Depending on the particular intake referral plan being utilized in the county, the probation department's authority to make these intake decisions may be limited.

1. Statutory Intake Referral Plan. The Family Code provides a statutory default intake referral plan that mandates certain offenses be sent to the juvenile prosecutor for his or her review to determine whether informal or formal court proceedings are merited. These offenses include all felony offenses or misdemeanor offenses involving violence to a person or the use or possession of a firearm, illegal knife, or club. If a county is following the statutory default plan, the juvenile probation department does not have the authority to dispose of cases in these categories.

2. Alternate Intake Referral Plan. Juvenile boards have the option to develop their own intake referral plan instead of using the statutory default. They can customize their plan to meet the needs of the community and available resources. For example, many counties routinely allow probation departments to screen and make intake decisions for all misdemeanors, while referring all felonies to the prosecutor. The one requirement of alternate intake plans is that any offense of capital murder or murder must be forwarded to the prosecutor for review.

D. Disposition Options. Disposition options for juvenile offenders fall into one of three categories: dispositions without referral to court, informal proceedings or formal court proceedings.

1. Disposition Without Referral To Court. Law enforcement officers may divert juvenile cases from formal court proceedings or informal proceedings with juvenile probation departments by sending the child to a first offender program or other informal disposition, if available in the local community.

2. Informal Proceedings. Informal proceedings include supervisory caution and deferred prosecution. These type of dispositions are normally reserved for less serious offenses.

- a. Supervisory Caution. A supervisory caution is a disposition where the probation department simply provides for counseling with the child regarding the illegal conduct and refers the child and family to any needed social services. This disposition is typically reserved for first time offenders committing very minor offenses.

- b. Deferred Prosecution. Deferred prosecution is basically an alternative to seeking a formal adjudication of delinquent conduct or conduct indicating a need for supervision. Deferred prosecution is essentially a six-month period of voluntary probation that is entered into by the child and his parents. If the child violates the terms of the probation, the state may elect to proceed with formal court adjudication. The juvenile prosecutor must consent to any deferred prosecution disposition for any child accused of committing a felony offense.

3. Formal Court Proceedings. The formal disposition options that are available for juvenile offenders depend primarily on the procedural posture of the case. This is a

decision that is made by the prosecutor. Depending on the particular circumstances and facts of the case, the prosecutor may ask the juvenile court to certify the juvenile to stand trial as an adult. Alternatively, the prosecutor may elect to proceed with either determinate sentencing or a normal delinquency or CINS proceeding. The various alternatives are discussed individually below.

a. **Certification as an Adult.** For many serious or chronic felony offenders, certification as an adult is deemed to be the most appropriate option. If a child is certified to stand trial as an adult, the child faces the same range of punishment that an adult would face for the same crime, except that a juvenile cannot receive the death penalty for an offense committed before turning 17 years of age. A child who was 14 at the time of commission of the offense may be certified for the following serious offenses: capital felonies, aggravated controlled substance felonies, or first degree felonies. For all other felonies, the child must have been age 15 at the time of the commission of the offense.

If a juvenile offender was previously certified to stand trial as an adult and that child then subsequently commits another felony offense, the prosecutor may choose to again certify the child. If the prosecutor elects this option and proves the child was indeed convicted in the previous case, the juvenile court judge must certify the child. This concept, introduced in 1995, is commonly referred to as "once certified, always certified."

b. **Determinate Sentencing.** Effective September 1, 1987, legislation was enacted to deal with violent offenses committed by juveniles under the minimum certification age of 15. For many juveniles, the alternatives of probation or commitment to the Texas Youth Commission (discussed below) were insufficient. For example, before the determinate sentencing law was enacted, the juvenile system could respond to a capital murder committed by a child just before his 15th birthday with a maximum of only 6 years of control over him. Determinate sentencing was dramatically expanded during the legislative session in 1995. If a prosecutor chooses to invoke the option of determinate sentencing, the grand jury must approve the petition charging the juvenile with the offense. If the court or jury finds at the conclusion of an adjudication hearing that the child committed one of the specified offenses, the child may be committed to the Texas Youth Commission with a possible transfer to the Texas Department of Criminal Justice (TDCJ) for up to 40 years, depending on the offense. A child is eligible for a determinate sentence if the child commits any of the following serious offenses: murder; capital murder; attempted capital murder; aggravated kidnapping; aggravated sexual assault; sexual assault; aggravated assault; aggravated robbery; injury to child, elderly individual, or disabled individual (excluding state jail felony); arson with bodily injury or death; aggravated controlled substance offenses; criminal solicitation; indecency with a child; criminal solicitation of a minor; and criminal attempt of murder or any "3g offense", which includes murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, sexual assault, and drug free zone enhanced controlled substance offenses. The law also provides a child may receive a determinate sentence for habitual felony conduct.

(1). **Penalty Ranges.** Because many of the offenses are second and third degree felonies, the penalty ranges are staggered to be comparable to the sentences adult offenders may receive. A child may receive up to 40 years for a capital felony, first degree felony or an aggravated controlled substance felony; 20 years for a second degree

felony; and 10 years for a third degree felony.

(2). Release From TYC. The law 1) authorizes TYC to request a transfer to prison for any child after the child reaches age 16 but before age 21; 2) authorizes TYC to administratively release a child if a minimum length of time has been served: 10 years for capital felonies, 3 years for first degree felonies, 2 years for second degree felonies and 1 year for third degree felonies; and 3) requires automatic transfer to adult parole at age 21, or earlier if the child is released on parole after age 19 (child is on TYC parole prior to age 19 if released).

c. Delinquency Petition. The majority of juvenile cases are handled using the normal delinquency petition. If a child is found by a judge or jury to have engaged in delinquent conduct, the juvenile court has several dispositional powers offered by the Family Code. These include:

(1) Probation. A child may be placed on probation for any term not to exceed the child's 18th birthday. The court may, before the period of probation ends, extend the probation for any period that does not extend to or after the child's 18th birthday. The Family Code provides that the court may choose from three types of probation placements which include (a) in the child's own home or in the custody of a relative or other fit person; (b) in a suitable foster home; or (c) in a suitable public or private institution or agency, except the Texas Youth Commission.

(2) TYC Commitment. A child may be committed to the care, control and custody of the Texas Youth Commission if the child is adjudicated for a felony offense or this is the third misdemeanor adjudication. All commitments to the TYC, except under the determinate sentence act, are for an indeterminate term not to extend beyond the child's 21st birthday. If, when and under what conditions a child is released from TYC before his 21st birthday is in the exclusive and sole discretion of TYC. The determination of the actual length of the child's stay is determined by TYC based upon the nature of the offense, the child's history and background, and the child's behavior while in TYC. The child is classified according to the offense for which he/she was committed. All offenses carry a minimum length of stay requirement set by the Texas Youth Commission.

(3) Driver's License Suspension. A juvenile court is mandated to suspend or prevent issuance of a driver's license in some situations. These include certain drug and alcohol violations. The juvenile court has the discretion to suspend or prevent issuance of the child's license in all other cases as a part of the disposition or as a sanction for violating the conditions of probation.

(4) Orders Affecting Person(s) Other Than the Child. The juvenile court has power over certain persons in addition to the child who was adjudicated. These powers may include the ability to order parents to pay child support, injunctive orders, orders for social and/or psychological counseling to

help rehabilitate the child and family, and orders requiring parents to pay probation supervision fees and costs of court.

(5) Orders for Restitution or Community Service. There are three types of restitution that can be entered by the juvenile court in the dispositional phase of the juvenile proceedings: (a) ordering the child to pay restitution as a condition of probation, (b) ordering the child to pay restitution independently of probation, and (c) ordering a parent to pay restitution. The court may also order a child or parent to perform community service restitution. The court *must* order community service (up to 500 hours) for all children placed on probation unless the court finds good cause why the child should not perform the service.

d. CINS Petition. If the child was adjudicated only for conduct indicating a need for supervision, the juvenile court is not authorized to commit him or her to the TYC. The probation alternative outlined above and the other dispositional powers, other than commitment to TYC, are available for the juvenile court. If a child violates a condition of CINS probation by conduct other than a fineable misdemeanor, truancy, or running away, a new petition for delinquency can be filed. If the child is subsequently found to have engaged in delinquent conduct as a result of the CINS probation violation, the child may then be committed to TYC as a delinquent.

E. Modification Proceedings. Any disposition, except a TYC commitment, can be modified by the juvenile court up until the child reaches age 18 or completes the terms of the probation. There is no right to a jury at a modification hearing.

F. Progressive Sanctions. In 1995, the Texas Legislature enacted the Progressive Sanctions Guidelines, which are a set of discretionary disposition guidelines for juvenile probation departments, juvenile prosecutors and juvenile court judges. While the guidelines are not mandatory, they are encouraged to be applied in an effort to bring consistency and predictability to juvenile dispositions. Deviations from the guidelines must be reported to TJPC who in turn will report to the Criminal Justice Policy Council (CJPC) for ultimate reporting to the Texas legislature. These deviation reports will be used to help analyze the juvenile justice system and its resource needs.

G. Juvenile Court Proceedings and the Public. The law provides that the court shall open juvenile court hearings unless the court finds good cause to close the proceedings, unless the child is under 14 years old at the time of the hearing. If the child is under 14 then the hearing must be closed to the public unless the court decides that it would be in the best interest of the child or public to open the hearing. Notwithstanding, a victim of the child's conduct or a member of the person's family may not be prohibited from attending a hearing in the child's case unless the person is to testify in the hearing.

H. Juvenile Files and Records. Files and records concerning juveniles are found in the possession of law enforcement, juvenile probation, prosecutor's offices, and the court. Historically, these records have been kept confidential and continue to be confidential, with few exceptions.

1. Confidentiality of Files and Records. The 1995 legislative session made numerous changes to the law concerning juvenile files and records. A common misconception is that the law changed to make all juvenile records open to public inspection. That is not the case. The list of persons or entities who have access to these files and records is extremely limited.

a. Who Has Access. Generally, the Family Code gives access to

juvenile files and records to: the professional staff or consultants of the agency or institution having custody of a child or treating a child; the judge, probation officers, and professional staff or consultants of the juvenile court; an attorney for the child; a governmental agency if the disclosure is required or authorized by law; state agencies (TDCJ, TJPC) for purposes of maintaining statistical records; and juvenile justice agencies.

b. Who Does Not Have Access. Anyone not listed above has no automatic access to juvenile files and records unless an exception to confidentiality can be found in another body of law or unless the juvenile court gives specific permission to release certain information.

2. Exceptions to Confidentiality Requirements. Various laws provide statutory exceptions to the strict confidentiality requirements of the Family Code.

a. Permission of Juvenile Court. The Family Code provides that the juvenile court judge, through a court order, can give permission to any person, agency, or institution having a legitimate interest in the proceeding or in the work of the court. Schools and law enforcement agencies often utilize this provision to get information regarding children on probation or charged with certain offenses.

b. Mandatory Communication to Schools Pursuant to Article 15.27 of Code of Criminal Procedure. Article 15.27 of the Texas Code of Criminal Procedure mandates two-way communication between schools and law enforcement, probation officers, prosecutors, and parole officers regarding children taken into custody and adjudicated or convicted of certain offenses.

(1) Offenses Covered. The notification requirements are triggered by all felonies and the following misdemeanors: false imprisonment; indecent exposure; assault; deadly conduct; terroristic threat; engaging in organized criminal activity; the unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana, as defined by Chapter 481, Health and Safety Code; the unlawful possession of any of the weapons or devices listed in Sections 46.01(1)-(14) or (16) or 46.05, Penal Code. It is critical to note that law enforcement and probation departments have no authority to release information regarding a juvenile case to school officials except for the specific information required by Article 15.27 for the above offenses.

(2) Notification Requirements: Law Enforcement. Law enforcement officers are required to notify schools within 24 hours or by the next school day of the arrest, detention, or referral to juvenile court of a student for one of the covered offenses. They must also provide the school with written notice within seven days of the oral notice. They are authorized to disclose pertinent details to ensure the school officials can protect the health and safety of the students and school employees (See Attorney General Opinion DM-294). The notice must also contain sufficient details of the offense to enable the superintendent to determine whether there is a reasonable belief that the student has engaged in the conduct.

(3) Notification Requirements: Prosecutor. If a student is convicted or adjudicated for one of the above listed offenses, the prosecutor's office must notify the school of the conviction or adjudication, giving a statement of the offense. Oral notification must be given within 24 hours or on the next school day, and written notice is due within seven days after the oral notice.

(4) Notification Requirements: Probation or Parole Office. A probation or parole office having jurisdiction of a student who transfers or is removed from a school and later is sent to a school other than the one in which the student was enrolled when the arrest, detention, referral to juvenile court, conviction, or adjudication occurred must provide the new school with notice in the same manner as law enforcement or the prosecutor's office described above.

c. Sex Offender Registration. Juveniles adjudicated for certain sexual offenses are legally required to register with law enforcement in the area where they reside. Information in the sex offender database maintained by the Texas Department of Public Safety is open to the public and is available on the Internet.

d. Juvenile Justice Information System (JJIS). Beginning January 1, 1996, juvenile offenders taken into custody for a Class B Misdemeanor or higher must be fingerprinted and photographed. This information is sent to the statewide Juvenile Justice Information System created and maintained by the Texas Department of Public Safety (DPS). Information in this system is available to any criminal or juvenile justice agency, so now law enforcement and prosecutors can determine the child's criminal history by running a "rap sheet" on the child.

III. JUVENILE JUSTICE AND EDUCATION

A landmark revision of the Texas Education Code occurred in 1995 during the 74th Texas Legislature. Within that statutory re-write, provisions to ensure safe schools were a major new component. Chapter 37 now legally mandates that the juvenile justice community and the education community come together to help make safe schools a reality. Some of the key points in Chapter 37 include: each school, in cooperation with the juvenile board of each county in which the district is located, shall, where appropriate, adopt a student code of conduct; each school district shall provide an alternative education program; schools must notify the juvenile court not later than the second business day when the child is removed from classroom and placed in the alternative education program or is expelled; and juvenile boards and schools may establish memorandums of understanding concerning the juvenile probation department's role in supervising and providing other support services for students in the alternative education programs.

A. Juvenile Justice Alternative Education Programs (JJAEP). Juvenile boards in a county whose population exceeds 125,000 shall develop a juvenile justice alternative education program. Any student expelled for an offense that requires expulsion shall be placed in the program. School districts must determine an appropriate placement for all other students who are expelled (e.g. JJAEP or private provider). Students placed in the JJAEP for one of the mandatory expulsion offenses will be paid for by the state through the juvenile board. Educational placements of children who are expelled for discretionary reasons (e.g. violation of student code of conduct in the alternative education program). Counties with a population below 125,000 may develop juvenile justice alternative schools at their discretion.

B. Approval of JJAEP by Texas Juvenile Probation Commission. Chapter 37 of the new Education Code requires the TJPC to formally approve all JJAEPs. TJPC's approval will ensure the program follows statutory guidelines and maintains certain quality standards.

IV. REFERENCES

This paper provides a very cursory overview of the Texas juvenile justice system, but numerous publications are available to assist persons who seek further or more extensive information on the juvenile justice system.

A. *Texas Juvenile Law*. The foremost reference book regarding the Texas juvenile justice system is *Texas Juvenile Law*, 4th Edition written by University of Texas Law Professor, Robert O. Dawson. Published by TJPC, the 4th Edition. This book is considered the "bible" for juvenile court judges, prosecutors, probation personnel, and any person practicing or interested in juvenile law.

B. Texas Youth Commission Publications. TYC publishes an annual report that contains useful information on their institutions and programs. TYC's Office of Delinquency Prevention also has extensive information and resources regarding early intervention and prevention programs for children.

C. Texas Juvenile Probation Commission Publications. TJPC publishes an annual report about the agency and the juvenile justice system in general. Additionally, TJPC publishes an annual statistical report showing juvenile criminal activity in Texas. These reports are free to the public.



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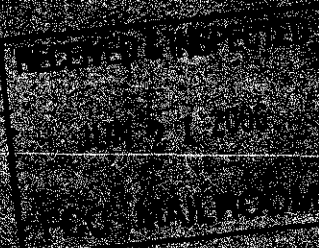
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